

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

No. 7:16-cv-00108

THOMAS E. PRICE, M.D., Secretary
of Health and Human Services, *et al.*,

Defendants.

STATUS REPORT

Pursuant to this Court’s August 16, 2017 Order, ECF No. 108, Defendants hereby provide the following update on “rulemaking proceedings initiated with respect to the challenged Rule.” ECF No. 108. *See also* 45 C.F.R. § 92 (the “Rule”). As previously described, Defendants are reevaluating the reasonableness, necessity, and efficacy of the Rule that is challenged in this case and, as part of that process, are assessing the issues identified by the Court in granting Plaintiffs a preliminary injunction.

A draft of a proposed rule is going through the clearance process within the Executive Branch. Specifically, Defendants are engaging with the Department of Justice (“DOJ”) on a draft of a proposed rule pursuant to Executive Order 12,250 (“Leadership and Coordination of Nondiscrimination Laws”). HHS and DOJ are working to complete the Executive Order 12,250 process. Once complete, the proposed rule must go through an inter-agency clearance process managed by the Office of Management and Budget (“OMB”) under Executive Order 12,866.

Defendants anticipate that after the clearance process is complete, the future rulemaking proceedings will involve notice and comment. The time required to complete both the clearance

process and notice and comment rulemaking proceedings will depend largely on inter-agency coordination and on the public comments on the proposed rule. Defendants anticipate the submission of the proposed rule to OMB in due course, and will inform the Court when that occurs.

Defendants request an opportunity to continue reconsidering the Rule and do not request that the Court close this case. Meanwhile, Defendants will continue to abide by this Court's preliminary injunction and will therefore not enforce the Rule's prohibition against discrimination on the basis of gender identity or termination of pregnancy.

Defendants therefore request that the Court maintain the stay in this case.

DATED: December 15, 2017

CHAD A. READLER
Acting Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

JOEL McELVAIN
Assistant Director, Federal Programs Branch

/s/ Emily B. Nestler
EMILY BROOKE NESTLER
ALEX HAAS
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
phone: (202) 616-8489
fax: (202) 616-8470
email: emily.b.nestler@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2017, a copy of the foregoing Status Report was filed electronically via the Court's ECF System, which effects service upon counsel of record.

/s/ *Emily Nestler*

Emily B. Nestler